THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.21920 of 1996

11.7.2006

Between:

Katra Kotamma, W/o.late Pitchaiah
And another

... Petitioners

AND

The Commissioner of Land Revenue, Hyderabad
And others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.21920 of 1996

ORDER:

This writ petition is filed seeking a writ of Certiorari quashing the order of the first respondent dated 19.9.1996.

The writ petition was originally filed by one Katra Kotamma. During the pendency of the case before this Court, she died and her grandson came on record as legal representative of deceased petitioner representing her interest. The land admeasuring Acs.2.38 in survey No.634/2B of Sarangapalli Agraharam hamlet of Madinapadu Village in Guntur District (hereafter called, subject land) was assigned to Katra Kotamma in 1978. The Sarpanch of Sarangapalli Gram Panchayat and another villager filed an application before the Revenue Divisional Officer, Narasaraopet (RDO), the third respondent herein. They complained that the land in survey No.634/2B is classified as Narasaiah Kunta, which was encroached upon by Katra Saidulu, the Village servant and others, and they requested to remove encroachments and restore the land as Kunta. The RDO conducted enquiry into the complaint and sent a report to the Joint Collector, Guntur, the second respondent herein, recommending cancellation of assignment. Accordingly, the Joint Collector, by proceedings dated 24.9.1989 ordered cancellation of pattas granted to Kotamma and three others in respect of the land comprised in survey No.634/2A of Sarangapalli Agraharam. Feeling aggrieved thereby, Kotamma approached the first respondent by way of an appeal. By order dated 25.10.1989, the appeal was allowed remanding the matter to the second respondent for fresh enquiry. Again, the second respondent conducted enquiry, personally inspected the lands and issued a show cause notice to Kotamma. Ultimately, the second respondent again cancelled the assignment by proceedings dated 27.1.1991. This was again agitated before the first respondent by way of appeal, which was rejected by order dated 19.9.1996 confirming the conclusion of the second respondent that Kotamma obtained assignment misrepresenting that herself and her family own dry land admeasuring Acs.8.97 and that she is not a landless and poor person eligible for

assignment of land.

In this writ petition, learned Counsel for the petitioners submits that before the Joint Collector as well as the first respondent, the petitioner took the plea that she got separated from her husband and family, that she was living separately and, therefore, she is not disentitled for assignment. Secondly, he would urge that though the husband, son and daughter-in-law of Kotamma also had land in survey Nos.567/1, 792/1F&E, 836/3, 838/4 and 837/6, except the land admeasuring Acs.2.38, which was assigned to Kotamma, the other land is not fit for cultivation and, therefore, Kotamma was landless and poor person. He also points out that after death of Kotamma, her grandson, K.Janesh, S/o.late Saidulu has come on record, that Janesh surrendered before the Government after a stint of membership with Communist Party of India –Marxist Leninist-Naxalites; and, therefore, the respondents should consider the allotment of the land to the second petitioner.

Learned Assistant Government Pleader for Revenue (Assignment) vehemently contends that all the family members of Kotamma were assigned various extents of lands, that her husband was assigned Acs.4.83, her son was assigned Acs.1.20, her daughter-in-law was assigned Acs.2.94 and Kotamma obtained assignment misrepresenting that she is a landless and poor person, and that when misrepresentation is a ground for cancellation of assignment, a writ petition would not lie.

The land in survey No.634/2B admeasuring Acs.4.33 as per the revenue records is classified as Narasaiah Kunta (tank). However, during the personal inspection on 21.1.1991, found the following ground position. 1) Acs.0.12 is under the occupation of N.Yalamanda, who raised cotton crop on the land at the time of inspection. The other land of Yalamanda and his three brothers admeasuring Acs.3.00 is just adjoining to Acs.0.12. 2) Acs.2.38 is being cultivated by Smt.Katra Kotamma and there is cotton crop on the land. Smt.Kotamma said that she alone is cultivating the land. 3) Acs.1.34 is lying vacant. There is grass growth, but there is no water. The land is leveled land. 4) Acs.0.44 is being cultivated by Guru Swamy by growing cotton. 5) Acs.0.05 of land is being cultivated by Raja Rathnam. On the basis of the above findings, the Joint Collector concluded that there is no tank on the ground and the entire tank was levelled. However, on local enquiry, which was found that petitioner's husband Pitchaiah was

assigned Acs.4.83 in survey Nos.836/3, 838/4 and 837/6, that Saidulu, Kotamma's son was assigned land admeasuring Acs.1.20 in survey No.567/1, and her daughter-in-law was also assigned an extent of Acs.2.94 in survey Nos.792/1F & E. Needless to point out that under the Board Standing Order (BSO), when a member of the family is assigned agricultural land as a landless poor person, other extent of the land cannot be assigned to any family member. Presumably, for this reason, Kotamma contended before the Joint Collector that she is living separately and, therefore, she is a landless poor person. Dealing with this aspect, the Joint Collector correctly observed that Kotamma can claim a share in the family property and that Government land cannot be assigned to her. Before the first respondent, a similar contention was raised. The first respondent dealt with this aspect of the matter in the following manner.

> Admittedly, the lady, the petitioner herein, aged 70 years, in 1991 as stated in her revision petition, is the member of family headed earlier by her husband. The family consists of husband, wife, and son and his wife. The husband, Pitchaiah, who is reported to be dead, was assigned Acs.4.83 cents, the details of which have been furnished in Joint Collector's order. Her son was assigned Acs.1.20 cents, her daughter-in-law was assigned Acs.2.94 cents. She herself was assigned Acs.2.38 cents in the Sy.No.634/D2 and 634/E2, which has been cancelled by the Joint Collector, now in the orders under appeal. The plea of the petitioner herein is that she was living separately from the family and she has brought filed ration card etc., in support of this. If this plea is accepted then one family can corner, all available land. The question is whether a lady who is a member of joint family owning Acs.8.97 cents of land, can be considered as a landless poor. In my opinion, it cannot be true. It seldom happens that a lady really lives separately from her husband and son. Even, otherwise, in that case wife will inherit the property of the husband, which is Acs.4.83 cents. One family in a village cannot be assigned all available land. The Joint Collector has rightly cancelled the patta granted to her earlier under misrepresentation of facts, extent Acs.2.36 cents in survey No.634/D2 and 634/E2. Her son is also working as a village servant and it is not correct to assign the land to the mother who was not eligible for it.

The findings of fact and the inferences drawn by the first respondent based on the record cannot be termed perverse. Nor there is an error apparent on the face of record requiring the exercise of

Certiorari jurisdiction of this Court. The Authorities below have correctly considered the facts before them, correctly drawn inferences and came to the right conclusion applying relevant provisions of Assignment Regulations.

The writ petition is devoid of any merit and is, accordingly, dismissed.

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(**V.V.S.RAO, J**)

July 11, 2006.
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